IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9207 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

H.P. THAKER

Versus

STATE OF GUJARAT

Appearance:
MR IS SUPEHIA for the Petitioner.
MR PARESH UPADHYAY for the Respondents.

CORAM : MR.JUSTICE P.B.MAJMUDAR
Date of decision: 23/01/2002

ORAL JUDGEMENT

1. With the consent of the parties, the matter was finally heard at length at the admission stage and now, it is required to be disposed of by this final judgment.

Hence, Rule returnable today. Mr.Upadhyay, learned Advocate, appears and waives service of rule on behalf of the respondents. Accordingly, the matter is now disposed of finally by this judgment.

2. The petitioner, a Judicial Officer, who was serving, at the relevant time, as Civil Judge (Junior Division), Dakor, District Kheda, has challenged the order of his dismissal from service by filing this petition and has also prayed for consequential relief of reinstatement, with full back wages. The matter was argued at length by Advocates of both the sides and the question, which is required to be considered in this petition, is whether the order of dismissal is just and proper in the facts and circumstances of the case and whether there was sufficient material before the Enquiry Officer for reaching the conclusion to the effect that the petitioner has committed misconduct. It is required to be borne in mind that the order of dismissal is passed against a Judicial Officer for doing something while passing a judicial order. In that view, the matter is required to be examined to find out whether he has crossed the limit, which a Judicial Officer is required to maintain while administering justice. It is also required to be borne in mind that when a Judicial Officer is deciding a matter, it affects the rights of the parties and a Judge, while deciding the matter, is discharging a pious duty, and nobody who is involved in the process of administration of justice is supposed to pollute the fountain of justice, directly or indirectly, and ultimately, if it is found that any one is responsible for polluting the fountain of justice, he is required to be kept away, at a safe distance. Keeping this basic aspect of the matter, this petition is required to be decided by this court.

3. The petitioner is charged as under :-

At the relevant time, i.e. between 15.6.1992 and 8.12.1994, the petitioner was serving as Civil Judge (Junior Division), and J.M.F.C., Dakor. Mr.Manohar Galani and Mr.Mahesh Mahatre, who were residents of Bombay City at the relevant time, wanted to bust the racket of issuing bogus processes, which was allegedly found to be prevalent in different Courts in the State of Gujarat, and in order to highlight the said fact, aforesaid two gentlemen contacted one Mr.Khambholja, an Advocate of Dakor Town, for filing a false complaint and to get false order of warrants by paying price for the same. For the aforesaid purpose, as aforesaid, they contacted Mr.Khambholja, Advocate. They were assured by

the aforesaid Advocate that he will manage with the Magistrate for securing bogus warrant and for that purpose, his professional fees were fixed at Rs.6,500/-. Thereafter, on 24th November, 1994, a complaint was filed at about 5.00 p.m. The said complaint was filed under Sections 363, 354, 506(2) read with Section 114 of the Indian Penal Code. The following persons are shown as accused in the said complaint :-

(1) Padmasinh Bajirao Patil;
(2) Vithalbhai Narhari Gadgil;
(3) Madhavrav Godkari;
(4) Madhavbhai Laxmanbhai Pendse;
(5) Kedavrav Shankerbhai Podge;
(6) Arunbhai Adse; and
(7) Shabirbhai Shaikh.

The said complaint was filed in the name of one Manjulaben Shankerbhai Parmar, the complainant, who was shown to be a resident of Dungra Bhagol, Dakor. The said complaint was presented before the petitioner, who was holding the charge of Civil Judge (Junior Division), Dakor, at the relevant time. As per the charge levelled against him, neither did the petitioner carry out examination of the complainant as required by Section 200 of the Code of Criminal Procedure, nor did he record the statement of the complainant on oath, nor did he make an enquiry about the alleged offences stated in the complaint from the lady, who was produced as complainant, and that, on the relevant day, i.e. on 24.11.1994, the petitioner had orally passed an order of issuance of summons against all the accused in the complaint. It is also alleged against the petitioner that at 7.00 p.m. on the very same day, Mr.Khambholja, Advocate, while sitting in his own office with Mr.Rameshbhai Mohanbhai Prajapati, who was serving, at the relevant time, as Senior Clerk, in the Court of Civil Judge (Junior Division), Dakor, Manohar Gelani and Mahesh Mahatre, contacted the petitioner on telephone at his residence, insisting him to issue warrants, instead of summons, below the said complaint. At that time, during the telephonic conversation, the petitioner had assured the said Mr.Khambholja, Advocate, that he can collect the warrants at 11.00 a.m. on the next day. That on the next day, i.e. on 25.11.1994, at about 11.00 a.m., the case papers were again put up before the petitioner and the petitioner informed Mr.Rameshbhai Prajapati, the Senior Clerk, to write the order, directing issuance of warrant against all the accused, and order of bailable warrant against each accused in the sum of Rs.1,000/- was written by the said Mr.Prajapati, as per the order dictated by

the petitioner. The petitioner therafter signed below the said order and, thereafter, he had directed Mr.Prajapati, the Senior Clerk, to put the date of 24.11.1994 below the said order, though the order was actually passed on 25.11.1994 so far as the order of issuance of warrants is concerned. This was done with a view to showing that the order, directing issuance of warrants was passed on the previous day when the complainant was present before him.

On the aforesaid charges, the petitioner was found to have been guilty of dereliction in discharging judicial function. By implication, he was found to have committed an act of corruption and that he acted in a manner which is unbecoming of a Judicial Officer.

The petitioner thereafter was asked to file the written statement of defence and to state whether he desired to be heard in person. The petitioner was also called upon to state why the above charges or any of them, if held proved, should not be considered as good and sufficient ground for imposing upon him any of the major punishments specified in Rule 6 of the Gujarat Civil Services (Discipline and Appeal) Rules, 1971.

4. The petitioner denied all the charges levelled against him and, subsequently, Enquiry Officer was appointed.

During the departmental enquiry, on behalf of the Department, six witnesses were examined, i.e.,

(i) Shri Ramesh Mohanbhai Prajapati;
(ii) Shri Rafuddin Abbasmiya Kazi;
(iii) Shri Shambhubhai Khodabhai Bhoi;
(iv) Smt. Amrutaben Shanabhai Vaghari;
(v) Shri Kuversinh Raijibhai Parmar; and
(vi) Shri Manohar Mangaram Galani.

Initially, the Department had decided to examine Mr.Mahesh Mahatre also, but it was not possible to serve him, and, subsequently, the said witness was dropped. The deposition of the petitioner was, therafter, recorded at Exhibit 102 on 4.9.1998 and he had also specifically submitted that he is not willing to examine any other witness. The Enquiry Officer thereafter heard the arguments of the Department as well as on behalf of the delinquent and after considering the evidence on record, came to the conclusion that it is proved that Mr.Manohar Galani and Mr.Mahesh Mahatre contacted Mr.Khambholja, Advocate of Dakor, for filing a false complaint for

purchasing warrants against some persons, who were friends of his father and they were harassing him for some agricultural lands at his native place. It was settled between Mr.Mahesh Mahatre and Mr.Khambholja, Advocate, that Mr.Khambholja will manage for bogus complainant and witnesses and will also manage with the Magistrate for such process, and for that purpose, the Advocate was paid the sum of Rs.6,500/-. It is also found to have been proved that Mr.Manohar Galani and Mr.Mahesh Mahatre wanted to highlight and bust the racket of issuance of bogus process by different Courts in the State of Gujarat. The Enquiry Officer also found that it is proved that in pursuance of the above, on 24.11.1994, at about 5.30 p.m. a private complaint for offences punishable under Sections 363, 354, and 506(2) read with Section 114 of the I.P.C. was filed by one Manjulaben Shankerbhai Parmar, of Dakor Town, against seven accused, all residents of Bombay. The aforesaid bogus complaint was placed before the delinquent through Mr.Khambholja, Advocate, bearing the thumb impression below the complaint as well as the statement of the complainant on oath. The Enquiry Officer also further found that it was proved that the delinquent did not follow the procedure of examination of the aforesaid complainant, as prescribed under Section 200 of the Criminal Procedure Code and the delinquent neither examined her nor did he make any enquiry to find out prima facie case in respect of the allegations made in the complaint filed by the lady complainant. It is also found to have been proved that the delinquent has already passed an order on 24.11.1994 to issue summons against all the accused. However, subsequently, on the next day, after telephonic conversation, which had taken place the day before between Mr.Khambholja, the Advocate, and the Magistrate, the order directing issuance of summons was replaced by an order directing issuance of warrants. The Enquiry Officer, therefore, found that the charges levelled against the petitioner were, ultimately, found to have been proved. It was also found that the act of the delinquent tantamounts to an act which is unbecoming of a Judicial Officer and such action is a grave misconduct and judicial impropriety.

The aforesaid report was submitted to the High Court on its administrative side.

On going through the Report, ultimately, the High Court agreed with the findings of the Enquiry Officer. It was found that the delinquent has committed grave misconduct, which is unbecoming of a Judicial Officer and, thereby, the delinquent has violated the provisions

contained in Rule 3 of the Gujarat Civil Service Conduct Rules, 1971. Ultimately, it was found that it is a fit case for issuance of notice to the delinquent, calling upon him to show cause as to why he should not be dismissed from service. Accordingly, the delinquent was served with a second show cause notice.

The same was replied by the delinquent by his reply, which is at Annexure `D' in the compilation. In his reply, he pointed out that the Enquiry Officer has raised unnecessary and irrelevant points for determination, which, according to him, have no connection or relevancy with the allegation of so-called misconduct. In his reply, he pointed out that there is no direct or indirect evidence by which it can be said that he was involved in the incident. He also pointed out that from the very beginning, he was serving with honesty and integrity. In his reply, he has also pointed out that he was made a scapegoat for the foul play of Mr.Manohar Galani and Mr.Mahesh Mahatre, and Mr.Khambholja, the Advocate. He also pointed out that the finding of the Enquiry Officer is based on conjectures and surmises, without there being any cogent evidence on record. He also pointed out, in his reply, that the observations of the Enquiry Officer as to what procedure the delinquent should have followed in respect of the private complaint of Manjulaben Shankerbhai Parmar, the complainant, are unwarranted since it is a matter of discretion of the Judicial Officer, which cannot be subjected to consideration thereof in any appeal or revision and / or in departmental enquiries. He also further pointed that his act of putting the date 24.11.1994 below the order, directing issuance of bailable warrants, should have been considered and appreciated in the light of his say and explanation given during his evidence and that the aforesaid lapse on his part, at any rate, does not suggest that Mr.Khambholja, the Advocate, had promised or assured to benefit him in any manner. He also pointed out that the most relevant and important witness, viz., Mr.Khambholja, is neither cited, nor relied upon by the Department to prove the telephonic conversation. He also gave detailed reply against other findings reached by the Enquiry Officer. In the concluding part of his reply, in paragraph 5, he stated that the proposed action of dismissal from service is quite excessive, unjust and improper looking to the bona fide, unintentional and unknowing lapse on his part. He also further pointed out that he is totally innocent and he was made a scapegoat for the foul play of the Advocates, Mr. Ramesh Prajapati, the Clerk, and Mr.Manohar Galani and Mr.Mahesh Mahatre, who wanted to

achieve their own aim. He further pointed out that he was not aware that the complaint in question is a bogus complaint and is managed by them against the seven accused, whose status, etc., was not deliberately mentioned in the complaint. He also pointed out that he is having a clean record as an honest, laborious and hard working Judicial Officer. He also further pointed out in his reply that he will be more careful in future and will not give any cause for such complaint whatsoever. Alternatively, it was prayed that a sympathetic view may be taken by awarding a minor penalty of withholding one or two years increments without any future effect.

5. After receiving the said reply, the High Court found that it is a case for dismissal of the said Officer and, ultimately, recommended the same to the State Government. The High Court came to the conclusion that it is a case, wherein the delinquent acted in a manner, which is unbecoming of a Government Servant (it should be treated as an act unbecoming of a Judicial Officer) and it is an act of recklessness and misconduct in the discharge of his duties and that the delinquent has acted in a manner which may amount to favouring a party in the case before him and that the penalty of dismissal is an appropriate penalty. The High Court, ultimately, by its order dated 18th June, 2001 concluded that the delinquent should be dismissed from service.

The State Government, after considering the Report of the Enquiry Officer and the finding of the High Court of Gujarat on its administrative side, accepted the recommendation of the High Court and vide Resolution dated 16.7.2001, it was ordered that the petitioner be dismissed from service with immediate effect from the date of the said order. The aforesaid Resolution dated 16.7.2001 is impugned in the present petition.

6. Mr.Supehia, learned Advocate for the petitioner, strenuously argued that considering the evidence on record, it cannot be said that the charges are proved against the petitioner. He further pointed out that it is a case of "no evidence" and that, therefore, this Court can set aside the findings given by the Enquiry Officer since it is based on no evidence at all.

Mr.Supehia also further submitted that the petitioner was not given necessary documents, which he demanded, which relates to the statements given during the preliminary enquiry by said Mr.Khambholja, Advocate. The documents relate to the statement of Mr.Khambholja, Advocate, before the Registrar of the High Court, which

was at the stage of preliminary enquiry, as well as the statement of one Mr.Vinod Varma, Advocate, and Mr.Ashok M. Thaker, who was the Criminal Board Clerk in the Court of Civil Judge (Junior Division), and J.M.F.C., Dakor, at the relevant time. Mr.Supehia further submitted that for want of those documents, the petitioner could not submit proper defence during the enquiry proceedings and it has prejudiced his defence accordingly. Mr.Supehia also further submitted that the Department has deliberately withheld most important witness Mr.Khambholja and since the said witness is not examined by the Department, adverse inference should be drawn against the Department. He further submitted that if Mr.Khambholja was examined as a witness, the petitioner could have brought better evidence by cross-examining the said witness during the enquiry proceedings.

7. It was next argued by Mr.Supehia that before dismissing him from service, the State Government has not consulted the Gujarat Public Service Commission and such consultation is mandatory and, therefore, also, the order in question is bad in law. He further submitted that the recommendation made by the High Court to the State Government for the purpose of dismissing the petitioner was not forwarded to the petitioner and on that ground also, the order in question is bad in law.

Mr.Supehia has also relied on certain judgments to substantiate his say that for non-supply of necessary documents, the ultimate decision can be said to have been in violation of the principles of natural justice. Mr.Supehia also further submitted that the Report of the Enquiry Officer is based on conjectures and surmises and the same is perverse and that no reasonable person would come to such a conclusion from the evidence on record. He also further submitted that, in any case, it is a case of bona fide error on the part of the petitioner and, therefore, it should be construed as a bona fide error of judgment and there was no mens rea on the part of the petitioner and, therefore, there is no question of any misconduct which can be attributed to the petitioner. Mr.Supehia has also further submitted that it is, no doubt, true that the petitioner-delinquent had entered into telephonic conversation with Mr.Khambholja, Advocate, but during that conversation, the petitioner had merely told that Advocate that he can submit in the Court whatever he wanted to submit, and that there was no further exchange of words between the petitioner and the said Advocate on telephone, such as asking the Advocate to come and collect the order of warrant on the next day. He submitted that so far as the second part of the

conversation with the Advocate is concerned, the same is not borne out from the evidence on record and there is no evidence worth the name on this point. According to him, therefore, merely talking with an Advocate over the telephone and asking him to come to the Court on the next day, cannot be said to be such a misconduct warranting dismissal of the petitioner from service. He also further submitted that, in any case, even on the quantum of punishment, order of dismissal is on the higher side and the petitioner should be visited with penalty of withholding of few increments without taking away his bread and butter.

8. Mr.Upadhyay, learned Advocate appearing for the State as well as the High Court, on the other hand, has supported the reasoning given by the Enquiry Officer. Mr.Upadhyay pointed out that considering the evidence on record, the misconduct against the petitioner is proved. He further submitted that, looking to the evidence on record, it is clear that the act of the petitioner is such, which cannot be expected from a Judicial Officer. He also further submitted that it cannot be said that this is a case in which there is absolutely no evidence. In his submission, even if there is some evidence on record, the finding of the Enquiry Officer cannot be said to be perverse or it cannot be branded as a case of "no evidence". Mr.Upadhyay has strongly argued that considering the strong circumstantial evidence and considering the admission of the petitioner that he received the telephone call from Mr.Khambholja, Advocate, it is clearly proved in the departmental enquiry that the charges levelled against the petitioner are proved.

Mr.Upadhyay also further submitted that in a departmental enquiry, strict proof of evidence is not applicable. He further submitted that in a departmental enquiry, principle of giving benefit of doubt is also not applicable and such proceedings cannot be equated with an ordinary criminal trial, where strict evidence, proving the guilt beyond doubt, is required. Mr.Upadhyay also submitted that it is not necessary to consult the Gujarat Public Service Commission and the Government is bound to accept the recommendation of the High Court. Mr.Upadhyay further submitted that looking to the facts and circumstances of the case, and considering the gravity of the charge, the penalty imposed against the petitioner is the only adequate penalty and, in the facts of the case, no other penalty could have been inflicted on the delinquent as such Judicial Officers are not required to be retained in service even for a moment if the charges are ultimately proved. He, therefore, submitted that

there is no substance in any of the arguments canvassed on behalf of the petitioner and that the petition deserves to be dismissed.

So far as the grievance of non-supply of documents is concerned, it is submitted by Mr.Upadhyay that those documents, which were referred in the charge-sheet and which were relied on during the enquiry proceedings, were supplied to the delinquent, and on whatever material the enquiry was proceeded, such material was made available to the petitioner and that, therefore, it cannot be said that there was any breach of any principles of natural justice as the relevant material, on which the Department relied on, was made available to the petitioner.

It was lastly submitted by Mr.Upadhyay that this Court, while exercising powers under Article 226 of the Constitution of India, cannot re-appreciate evidence on record as if it is a regular appeal and the scope of judicial review, in his submission, is very limited and simply because on the given set of evidence another view is possible, the same is also no ground for coming to a different conclusion. Mr.Upadhyay also further submitted that when the High Court, on its administrative side, having examined the case as well as having gone through, in detail, the charges and evidence on record and the High Court, being a Constitutional authority, having taken a decision, such decision cannot be interfered with lightly.

9. I have considered the submissions made by advocates on both the sides in detail and I have also considered the various case laws cited by the learned Advocates to substantiate their respective say.

10. The question which is required to be considered is whether, from the evidence on record, the charges against the petitioner can be said to have been proved and if it is found to have been proved, the next question which is required to be considered is whether the petitioner-delinquent was given reasonable opportunity to defend his case during the enquiry proceedings and, ultimately, if it is found that the charges are proved, whether the penalty of dismissal is justified or not.

11. In order to appreciate the aforesaid controversy, it is necessary to go into the background of the case. It is required to be noted that one Mr. Manohar Galani and Mr.Mahesh Mahatre, who were residents of Bombay City, wanted to find out whether, in some courts in the State

of Gujarat, processes are issued on the basis of false complaints. It seems that Mr. Manohar Galani was subjected to harassment in the sense that he was falsely implicated in some criminal cases and in which processes were issued by the concerned Magistrate and in order to find out such racket, it was decided by him to file a false complaint and to secure a false order, directing issuance of warrant. With this definite purpose, he, along with one Mr.Mahesh Mahatre, came to Dakor. The said two gentlemen were having information that it is easy to file such false complaints and obtain orders in the Court of the Magistrate at Baroda and Dakor. Firstly, they visited Baroda for filing such complaint, but, ultimately, for some reasons, it was not possible to file such complaint at Baroda as the price to be charged by the concerned Advocate at Baroda was on the higher side. Ultimately, they came to Dakor and it was managed to file such false complaint with the help of Mr.Khambholja, Advocate, and for that purpose, professional fees was fixed at Rs.6,500/-. The purpose of filing such false complaint was to highlight and bust the racket of bogus processes issued by some courts in the State of Gujarat. Under the aforesaid circumstances, the aforesaid two gentlemen decided to file the aforesaid case, and as a first step towards the aforesaid mission of securing false warrants by filing such false case, a complaint was filed on 24.11.1994 after 5.00 p.m. The said complaint was also made available to this court at the time of hearing of this petition. The said complaint is also worth reading.

In the aforesaid complaint, one Manjulaben Shankerbhai Parmar is the complainant. Seven accused are shown in the said complaint and the accused No.4, Mr.Madhavbhai Laxmanbhai Pendse, was a sitting Judge of the Mumbai High Court at the relevant time. It is no doubt true that in the cause title, his description was shown as if he was doing service and agricultural work. However, the address is clearly shown as : Sarang, Captain Jaganath Bhosle Marg, Bombay - 22. Name of another accused, i.e. accused No.2, is shown as : Vithalbhai Narhare Gagdil, i.e. V.N. Gadgil, though further description is not given about his occupation, etc., except stating that he is a businessman. As per the averment in the complaint, the aforesaid accused of the said complaint often used to visit Dakor Town for the purpose of offering prayer at Dakor Temple and that is how the complainant used to know them personally. On the relevant day, i.e. on 17.11.1994, an assurance was given by the accused that they will provide her with employment at Bombay. On the next day, i.e. on 18.11.1994, the

accused came again to her, asking information about a place of interest nearby Dakor Town. She was also requested to accompany them at such place. She, accordingly, agreed and at about 4.30 in the evening, all of them went to Galteshwar Town, which is a near by place of Dakor. According to the said complaint, accused No.1 himself was driving the said car and after taking tea and snacks at the hotel, they went to the nearby place and in the late evening, the aforesaid accused misbehaved with her and she was also threatened that if she did not succumb to their demand, she will be killed. As per the complaint, the accused were in a drunken condition and having realized their intention, she started shouting and because of her shouting, some people gathered at the said place and the accused, therefore, immediately ran away from the said place in their car. It is also stated in the said complaint that on the aforesaid date, i.e. on 18.11.1994, she spent the entire night on the footsteps of the temple and, thereafter, on the next day, i.e. on 19.11.1994, she want to Thasra Police Station for lodging the complaint, but since the Police Officer in charge refused to take the said complaint, she decided to file the complaint before the Court and, accordingly, the said complaint was filed on 24.11.1994 (i.e., after a period of about 4 to 5 days after the aforesaid so-called incident). Below the said complaint, her statement is recorded and, thereafter, as per the endorsement below the complaint, on the same day, i.e. on 24.11.1994, the Magistrate issued warrant against the accused under Sections 363, 354, 506(2) read with Section 114 of the Indian Penal Code and issued bailable warrant in the sum of Rs.1,000/-.

The question, therefore, which is required to be considered is whether, after reading the complaint, the Magistrate had taken reasonable care to find out whether, prima facie, it was possible to believe that the aforesaid incident in question has happened. Under the Code of Criminal Procedure, necessary enquiry is required to be made by the Magistrates before issuing such summons / warrant. It is also required to be noted that even there is a provision for making further enquiry, as contemplated by Section 200 of the Criminal Procedure Code, which procedure was admittedly not followed in the instant case. Under ordinary circumstances, if such omission is found, one can presume that it may be a bona fide error on the part of the concerned Judge in not strictly complying with the provisions of law before passing the appropriate order.

It is submitted by the petitioner that he was not

aware about the identity of the persons arraigned as accused and that he was not aware that they were high dignitaries, like a sitting Judge of the Bombay High Court. Even if they were ordinary citizens, care was required to be taken by the Judge before issuing the warrant.

The facts of the case are required to be examined in the aforesaid background of the nature of the complaint, the concerned persons who are arraigned as accused in the compliant, the anture of the allegation in the complaint, coupled with the fact that it is an admitted fact that, ultimately, the order of warrant was issued on the next day, even though it was pronounced in the Court that summons is required to be issued on the very day on which the complaint was filed, i.e. on 24.11.1994. It is required to be found out from the evidence on record whether there is any material on the record for coming to the conclusion that the charges, which are levelled against the petitioner are proved on the basis of preponderance of probabilities or even circumstances or that there is absolutely no case worth the name from the evidence on record for reaching such conclusion. It is required to be noted that in a domestic departmental enquiry, even preponderance of probabilities is sufficient for reaching the conclusion of misconduct. Domestic enquiry proceedings are not full-fledged criminal trials, where Prosecution is required to prove the case beyond doubt. From the material on record if reasonable inference can be drawn for reaching a particular conclusion, this Court, while deciding a petition under Article 226 of the Constitution will not re-appreciate the evidence to find out whether from the said material on record, other view is possible. However, in my view, even considering the material and evidence on record, it is not even possible to come to any conclusion other than the one which is arrived at by the Enquiry Officer during the enquiry proceedings and which is approved by the High Court on its Administrative Side. It is required to be noted that there is ample evidence on record to show that, initially, the petitioner-delinquent decided to issue summons against the aforesaid accused on 24.11.1994, i.e. the day on which the complaint was presented before the Magistrate. Even Mr.Supehia for the petitioner has admitted the said fact. The second part of the story is that on the same evening, there was a joint meeting at the office of Mr.Khambholja, Advocate, and at that time, Mr.Prajapati, Clerk of the Court, came with blank summons for the purpose of handing over the same to the Advocate of the complainant.

At present, this Court is not concerned with the conduct of Mr.Prajapati, the Clerk of the Court, as the aforesaid proceedings are not before this Court and, I am sure that appropriate action must have been taken against Mr. Prajapati, the Clerk of the Court, because there was no reason for him to go with blank summons to the office of the concerned Advocate. However, since the issue is not before this Court, I am not dealing with the said aspect in the present proceedings.

As stated earlier, the aforesaid factual aspect is not in dispute that Mr.Prajapati, the Clerk of the Court, went with the blank summons for the purpose of filling up the same and handing over the same to the Advocate concerned for the purpose of serving the same. It is pointed out before me by Mr.Supehia that after the Magistrate passes the order, directing issuance of summons, so far as preparing the copy of the summons, etc., is concerned, the same is required to be done by the concerned clerk and at the said stage, the Magistrate has no role to play even by putting signature on the summons form. Therefore, the fact that the Clerk of the Court carried the blank summons for the purpose of handing over the same to the Advocate of the complainant suggests that on the previous evening, order was already passed directing issuance of summons in the aforesaid case, though, of course, there is nothing on record to show that actually, such order was passed on the relevant day, i.e. on 24.11.1994, but, as argued by Mr.Supehia, the Magistrate had passed the said order directing issuance of summons, but his signature was not put below the said order on the very day. Thereafter, the aforesaid two people, viz., Mr.Manohar Gelani and Mr.Mahesh Mahatre, were not satisfied with the aforesaid order of summons, as they wanted an order, directing issuance of warrants and, therefore, they insisted with the Advocate that, instead of summons, he should try to see that the order of warrant is issued by the Magistrate as the total fees which was settled with the Advocate was for the purpose of getting warrants and not summons. This part of the case is borne out from the evidence of Mr.Galani as well as from the evidence of Mr.Prajapati, the Clerk of the Court, which is on record. It is also not in dispute and is also borne out from the evidence that, thereafter, Mr.Khambholja, Advocate, telephoned the Magistrate at his residence at about 7.00 p.m. The Magistrate, i.e. the petitioner herein, received the said telephone call. As per the case of the Department, the Magistrate assured the Advocate that he will get the order of warrant on the next day, as desired by him and

that he can report to the Court next day in the morning. It is not in dispute that, on the next day, the papers were again placed before the Magistrate and the order of warrant was issued by him on the next day, i.e. on 25.11.1994. However, the date of 24th November, 1994 was shown below the aforesaid order directing issuance of warrant. The delinquent, in his evidence, has admitted the aforesaid fact that he did receive the telephone call in the evening of 24.11.1994. However, according to him, without entering into any further conversation on the telephone, he informed the Advocate that whatever he wanted to say can be mentioned in the Court and beyond that, he had not continued the said talk. It is his case that during the telephone talk, he had never assured the Advocate that he can collect the order of warrant and the only thing which was told to the Advocate was that whatever he wanted to submit, he can submit in the Court on the next day. However, the aforesaid facts clearly show that on the previous day, the Magistrate decided to issue only summons. Not only that, even Mr.Prajapati, the Clerk of the Court, went with plain copies of the summons for handing over the same to the Advocate of the complainant.

Of course, in my view, the way things are going on in the lower courts is a pointer to the very sorry state of affairs. In my view, it is difficult to imagine how an employee of the Court can go to the Office of an Advocate, with blank summons, and it is difficult to appreciate as to how such things are tolerated. I am sure that the authority concerned will take appropriate steps in the task of purifying the process of administration of justice.

It is also required to be noted that the concerned Advocate had enough courage even to telephone the concerned Judge and to ask him to pass a particular type of order in the evening at his residence, coupled with the fact that, on the next day, the desired order of warrant was issued by the Magistrate. It is not possible to accept the say of Mr.Supehia that it is a matter of coincidence that on the earlier evening, he decided to issue summons, but on the next day, after having realized the gravity of the complaint, he changed his mind and that, ultimately, in order to render justice to the lady complainant, order of warrant was issued by him. It is clearly reflected that the concerned Advocate was having full confidence that the Judge concerned will pass appropriate order as per his desire on the next day, even though he had pronounced the order of summons in the court in the earlier evening, i.e. on 24.11.1994. That

with the aforesaid confidence, he telephoned to the concerned Judge at his residence and, instead of taking action against the concerned Advocate for interfering with the administration of justice, the delinquent passed the aforesaid desired order on the next day, by directing issuance of warrant. This part of the evidence is not in dispute at all. However, the submission of Mr.Supehia is that, it is no doubt true that the Magistrate, i.e. the delinquent petitioner, received the telephone call from the Advocate and during the conversation on the telephone, the Advocate has insisted to have an order of issuance of warrant, but the petitioner immediately stopped the telephone by putting down the Receiver by asking him to address him in the open court on the next day. He submitted that there is nothing on record and no witness has said that the delinquent petitioner had assured the Advocate that he will get the order on the next day. Even if there is no evidence so far as the assurance of the Magistrate on telephone is concerned, it is clear that the petitioner did initially decide to pass an order, directing issuance of summons and subsequently, he received telephone call from the Advocate in the evening and on the next day, he issued the order directing issuance of warrant, which was the demand of the Advocate of the complainant.

The reasonable conduct, which was expected from the petitioner, was to take an appropriate action against the concerned Advocate, who had the courage to telephone the Judge in a pending judicial case and, on the next day, the order which was demanded on telephone on the previous evening was passed. It is required to be noted that no litigant or Advocate can make a telephone call to the concerned Judge in a pending matter, requesting him to pass a particular order. If such telephone call is received, the concerned Judicial Officer is expected to take appropriate proceedings for the same. I am not in agreement with the submission of Mr.Supehia that it was merely a lapse on the part of the petitioner in not taking appropriate action against the concerned Advocate for telephoning him in a pending judicial matter. However, this is not enough, but, ultimately, the desired order was passed. This aspect can be considered from another angle. The aforesaid two persons, viz., Mr.Manohar Galani and Mr.Mahesh Mahatre, were having definite information that bogus orders are passed below bogus complaints in certain Courts in Gujarat, including the Court at Dakor. Therefore, with the definite purpose of fling false complaint, the aforesaid two gentlemen came to Dakor and contacted the concerned Advocate. As per the evidence on record, the Advocate assured the

aforesaid person that the order, as desired by them, will be obtained and accordingly, they were assured that the order directing issuance of warrant will be procured. Thereafter, the complaint in question was filed. Initially, on the same day, order was passed, directing issuance of summons. On the very same evening, concerned Advocate telephoned the concerned Judge and, ultimately, on the next day, the Magistrate, after changing his mind, passed the order, directing issuance of warrant, instead of summons. The aforesaid chain of events is not in dispute and, therefore, even assuming that the say of the petitioner is correct that there is no evidence that the Magistrate has assured the concerned Advocate that he can get the order of warrant next day, then also, the aforesaid events and circumstances prove beyond doubt that the order in question, directing issuance of warrant, was not passed bona fide. At this stage, it is also required to be noted that the aforesaid complainant of the said bogus complaint, i.e. Amrutaben Shankerbhai Vaghari, was also examined during the enquiry. In her evidence, she has clearly stated that she was asked to go to the Court in connection with some matrimonial case which was filed by her daughter. She has also further stated that she was asked to sit on a bench and she was asked to put her thumb impression of her left hand. She has also further stated in her evidence that she is an illiterate lady and, ultimately, she was taken before the Magistrate by the aforesaid three Advocates. It was not possible for her to understand the conversation which was taking place between the Advocate and the Magistrate. She also further stated in paragraph 4 of her evidence that she had never filed complaint against the concerned accused, whose names were disclosed to her. She has also stated that she has never seen such people, i.e. the accused, at any point of time. She has stated that to the questions which were asked by the Magistrate, she had given reply in the affirmative as the aforesaid questions were related to the divorce proceedings of her daughter. In view of the evidence of the aforesaid complainant, it is clear that even the relevant questions pertaining to the complaint in question were not asked by the Magistrate; instead, questions regarding some divorce proceedings were asked. Criminal proceedings are not required to be initiated so lightly and, it is, therefore, expected from the Magistrate to apply his mind before passing order, directing the issuance of warrant. It is established beyond doubt that reasonable care which was required to be taken was not taken. However, the same cannot be branded as an innocuous omission as the complainant has clearly stated in her evidence that the question regarding divorce case were put to her and,

therefore, she had given the reply in the affirmative. The aforesaid omission on the part of the Magistrate, therefore, can never be said to be a simple omission or error of judgment. If the totality of the evidence is taken into consideration, it is clear that there is enough evidence on record for coming to the conclusion that the petitioner was guilty of the charges which were levelled against him. It is true, as argued by Mr.Upadhyay, that even if there is some evidence on record, then, in the departmental enquiry, the charges can be said to have been proved on the basis of such available evidence on record. For this purpose, Mr.Upadhyay relied on the decision of the Apex Court in Kuldeep Singh v. The Commissioner of Police and others, AIR 1999 SC 677. Reference is required to be made to paragraphs 9 and 10 of the said judgment, which read as under :-

> " ... ...
>
> 9. Normally the High Court and this Court would not interfere with the findings of fact recorded at the domestic enquiry but if the finding of "guilt" is based on no evidence, it would be a perverse finding and would be amenable to judicial scrutiny.
>
> 10. A broad distinction had, therefore, to be maintained between the decisions which are perverse and those which are not. If a decision is arrived at on no evidence or evidence which is thoroughly unreliable and no reasonable person would act upon it, the order would be perverse. But if there is some evidence on record which is acceptable and which could be relied upon, howsoever compendious it may be, the conclusions would not be treated as perverse and the findings would not be interfered with.
>
> ... ..."

12. In my view, in the instant case, even otherwise, there is enough evidence in reaching the conclusion arrived at by the Enquiry Officer at the time of appreciating the evidence on record. Considering the evidence on record and considering the circumstances, as narrated above, it cannot be said that there is absolutely no evidence worth the name against the delinquent and that it is a case of "no evidence". It is

no doubt true that if there is absolutely no evidence, then, this Court, in a petition filed under Article 226 of the Constitution of India, can set aside the findings of the Enquiry Officer, if the evidence is based absolutely on no material worth the name. However, as stated above, and as per the circumstances narrated above, I am of the opinion that the evidence on record is sufficient to establish the guilt of the concerned delinquent officer. The submission of Mr.Supehia, that it is a case of "no evidence", therefore, cannot be accepted and even otherwise, it is not for this Court to re-appreciate the entire evidence as if this Court is exercising appellate powers while deciding matters under Article 226 of the Constitution of India. Even if the entire evidence is re-appreciated, then also, in my view, no view other than the one taken by the High Court on its Administrative side is possible. The first contention of Mr.Supehia, therefore, is required to be rejected since I do not find any substance in the same.

13. So far as the grievance on the part of the petitioner about non-supply of necessary documents is concerned, to substantiate his say, Mr.Supehia, learned Advocate for the petitioner, has relied upon the decisions of the Apex Court in State of Madhya Pradesh v. Chintaman Sadashiva Waishampayan, AIR 1961 SC 1623, and in Kashinath Dikshita v. Union of India and others, AIR 1986 SC 2188, and the decision of this Court in Anantrai L. Vadnagra v. State of Gujarat & anr., 2000 (CD) 251. In AIR 1961 SC 1623 (supra), it has been held by the Apex Court in paragraph 9 as under :-

> " ... ...
>
> (9) Then as to the file of the Razakars, it is really surprising that this file should be reported to have been lost. The respondent's case was that the Razakars in question for whose release he is alleged to have accepted the bribe were released on the recommendations of the District Superintendent of Police and under the orders of the Civil Administrator of Adilabad. The file was therefore relevant and, according to the respondent, the suggestion that the file had been lost was untrue and it was not produced because it was apprehended that, if produced, it would support his defence. It is true that the enquiry officer stated that he had made a search in his office but it could not be

traced and that he was enquiring from the Collector and trying to find out whether the file could be found in the Collector's office. Apparently the respondent was given a letter addressed to the Collector wherein he was requested to show the file to the respondent if available. He was, however, told that the file was not traceable. It is in connection with the alleged loss of this file that the criticism made by Mr.Justice Sen about the indecent haste made in the enquiry becomes relevant. If only more diligent efforts had been made to discover the file, the enquiry officer would have been able to see whether the plea made by the respondent on the strength of the said file was genuine or not. It is in the light of these facts that the High Court has held that the enquiry was not satisfactory, and that in substance, the respondent had been denied a reasonable opportunity to meet the charges framed against him. There is no dispute that under Art. 311(2) the respondent is entitled to have such a reasonable opportunity. A proper opportunity must be afforded to him at the stage of the enquiry after the charge is supplied to him as well as at the second stage when punishment is about to be imposed on him. If the first enquiry was materially defective and denied the respondent an opportunity to prove his case it is impossible to hold that a reasonable opportunity guaranteed to a public servant by Art. 311(2) had been afforded to the respondent in the present case.

... ..."

In Kashinath Dikshita v. Union of India and others, AIR 1986 SC 2118, it has been held by the Apex Court in paragraph 10 as under :-

" ... ...

10. And such a stance was adopted in relation to an inquiry whereat as many as 38 witnesses were examined, and 112 documents running into hundreds of pages were produced to substantiate the charges. In the facts and circumstances of the case,

> we find it impossible to hold that the appellant was afforded reasonable opportunity to meet the charges levelled against him. Whether or not refusal to supply copies of documents or statements has resulted in prejudice to the employee facing the departmental inquiry depends on the facts of each case. We are not prepared to accede to the submission urged on behalf of the respondents that there was no prejudice caused to the appellant, in the facts and circumstances of this case. The appellant in his affidavit page 309 of the SLP Paper book has set out in a tabular form running into twelve pages as to how he has been prejudiced in regard to his defence on account of the non-supply of the copies of the documents. We do not consider it necessary to burden the record by reproducing the said statement. The respondents have not been able to satisfy us that no prejudice was occasioned to the appellant.
>
> ... ..."

So far as the decision of this Court relied on by Mr.Supehia (Coram : M.R. Calla, J.) in Anantrai L. Vadnagra v. State of Gujarat & Anr., 2000 (CD) 251, is concerned, this Court has held that the relevant documents had not been supplied in spite of repeated requests and the petitioner therein was asked to face enquiry in the absence of such documents. This Court held that in such matters, satisfaction of the authority that the documents asked for are not relevant is not of much significance, as it is for the petitioner to choose as to which document will be relevant and germane for him to defend himself. In the facts of the case, it was held by this Court that non-supply of such documents had caused prejudice to the petitioner and principles of natural justice were violated. On the aforesaid ground, the departmental enquiry was found to have been vitiated. It is required to be noted that in the instant case, the documents on which the Department relied during the enquiry, were given to the petitioner. It is not the say of the petitioner that even the documents, on which reliance was placed by the Department, are not made available to him. However, Mr.Supehia argued that in absence of such documents, it was not possible for the petitioner to defend the charges properly and that only in order to defend the proceedings properly, he wanted

those documents for his defence. However, in my view, the relevant documents, which were concerned with the issue in question, were already supplied. It was not expected from the Department to give to the petitioner copies of even such documents, to which no reference is made. The petitioner knew the charges very well in advance. On the basis of the charges, concerned documents relating to the charges, were given to him; the petitioner gave detailed reply to the charges and he also led evidence in this behalf. In my view, therefore, documents which were related to the preliminary enquiry and on which no reference was made in the regular enquiry, were not required to be given to the petitioner and, therefore, it cannot be said that on that ground, the enquiry proceedings are vitiated.

In the case of U.P. State Road Transport Corporation and others v. Musai Ram and others, (1999) 3 SCC 372, the Apex Court has held as under :-

> " ... ...
>
> 7. Learned counsel for the respondent had relied upon several authorities dealing with the question whether in cases where the statements of witnesses are recorded during the preliminary enquiry and are relied upon in support of the charges, if copies of such statements are not given to the person charge-sheeted, there would be a violation of the principles of natural justice. We will only refer to one of these authorities which summarises the decisions on this issue, which is Chandrama Tewari v. Union of India. The Court has held that where the documents are mentioned in the memo of charge but are neither relevant to the charge nor referred to or relied upon by the authorities nor are necessary for cross-examination, non-supply of such documents would not vitiate the proceedings and there would be no violation of the principles of natural justice.
>
> ... ..."

14. At this juncture, reference is also required to be made to some decisions, on which Mr.Upadhyay, learned Advocate for the respondents, placed reliance. In Chandrama Tewari v. Union of India, 1987 (Supp) SCC 518,

the Apex Court made the following relevant observations :-

" ... ...

4. We have given our anxious consideration to the submissions made on behalf of the appellant and we have further considered the aforesaid authorities referred to by the learned counsel for the appellant but we do not find any merit in the appellant's submissions to justify interference with the High Court's judgment. Article 311 of the Constitution requires that reasonable opportunity of defence must be afforded to a government servant before he is awarded major punishment of dismissal. It further contemplates that disciplinary enquiry must be held in accordance with the rules in a just and fair manner. The procedure at the enquiry must be consistent with the principles of natural justice. Principles of natural justice require that the copy of the document if any relied upon against the party charged should be given to him and he should be afforded opportunity to cross-examine the witnesses and to produce his own witnesses in his defence. If findings are recorded against the Government servant placing reliance on a document which may not have been disclosed to him or the copy whereof may not have been supplied to him during the enquiry when demanded, that would contravene principles of natural justice rendering the enquiry, and the consequential order of punishment illegal and void. These principles are well settled by a catena of decisions of this Court. We need not refer to them. However, it is not necessary that each and every document must be supplied to the delinquent government servant facing the charges, instead only material and relevant documents are necessary to be supplied to him. If a document even though mentioned in the memo of charges is not relevant to the charges or if it is not referred to or relied upon by the enquiry officer or the punishment authority in holding the charges proved against the government servant, no exception can be

taken to the validity of the proceedings or the order. If the document is not used against the party charged the ground of violation of principles of natural justice cannot successfully be raised. The violation of principles of natural justice arises only when a document, copy of which may not have been supplied to the party charged when demanded is used in recording finding of guilt against him. On a careful consideration of the authorities cited on behalf of the appellant we find that the obligation to supply copies of a document is confined only to material and relevant documents and the enquiry would be vitiated only if the non-supply of material and relevant documents when demanded may have caused prejudice to the delinquent officer.

xxx xxx xxx

9. It is now well settled that if copies of relevant and material documents including the statement of witnesses recorded in the preliminary enquiry or during investigation are not supplied to the delinquent officer facing the enquiry and if such documents are relied in holding the charges framed against the officer, the enquiry would be vitiated for the violation of principles of natural justice. Similarly, if the statement of witnesses recorded during the investigation of a criminal case or in the preliminary enquiry is not supplied to the delinquent officer that would amount to denial of opportunity of effective cross-examination. It is difficult to comprehend exhaustively the facts and circumstances which may lead to violation of principles of natural justice or denial of reasonable opportunity of defence. This question must be determined on the facts and circumstances of each case. While considering this question it has to be borne in mind that a delinquent officer is entitled to have copies of material and relevant documents only which may include the copy of statement of witnesses recorded during the investigation or preliminary enquiry or the copy of any other document which may have been relied

on in support of the charges. If a document has no bearing on the charges or if it is not relied on by the enquiry officer to support the charges, or if such document or material was not necessary for the cross-examination of witnesses during the enquiry, the officer cannot insist upon the supply of copies of such documents, as the absence of copy of such document will not prejudice the delinquent officer. The decision of the question whether a document is material or not will depend upon the facts and circumstances of each case.

10. In the instant case there is no denying the fact that a copy of paper No.5 as mentioned in the charge-sheet was not supplied to the appellant and he was not permitted to inspect the same. It appears that paper No.5 was the report submitted by the Special Police Establishment in respect of the criminal case of theft of coal, in which final report had been submitted. After submission of final report in the criminal case disciplinary enquiry was initiated against the appellant. Paper No.5 (the report) was, however, not considered or relied on by the enquiry officer in recording findings against the appellant. We have perused the copy of the report of the enquiry officer furnished to the court by the appellant but we do not find any reference to paper No.5 therein. The enquiry officer has not either referred to nor relied upon that report in recording findings on the charges framed against the appellant. In this view the report (paper No.5) was not a material or relevant document and denial of copy of that document could not and did not prejudice the appellant and there was no violation of principles of natural justice. The appellant's grievance that in the absence of report he could not effectively cross-examine Shri A.C. Das, Dy. S.P. of Special Police Establishment, the investigation officer, is not sustainable. A copy of the statement as recorded by the enquiry officer has been placed before us by the appellant on a perusal of the same we find that Shri A.C. Das (sic)

> cross-examined at length in detail. His examination-in-chief is confined to one page while his cross-examination runs into six foolscap typed pages. The appellant has failed to point out as to how he was prejudiced. In our opinion the appellant was not handicapped in cross-examining Shri A.C. Das; his grievance that he was not afforded reasonable opportunity of defence is without any merit.
>
> ... ..."

Even the decisions, on which Mr.Supehia has relied, are also considered in paragraphs 5 and 8 of the aforesaid judgment. Mr.Upadhyay has, therefore, based his argument, relying upon this judgment, and pointed out that all the relevant documents, which are relied upon by the Department, were made available to the delinquent and if one or two documents, which were part and parcel of the preliminary enquiry, are not given to the petitioner, it would not vitiate the enquiry and it cannot be said that there is a violation of the principles of natural justice. It is also not possible for me to believe that any prejudice is caused to the petitioner in any manner simply because some documents, which were part and parcel of the preliminary enquiry, were not made available to the petitioner. Considering the totality of the evidence on record, as discussed by me earlier, I am of the opinion that no prejudice was caused to the petitioner, especially when at least material part of the evidence, regarding receiving telephone call, has already been admitted by the petitioner during the enquiry and in view of the clear-cut admission on the part of the petitioner, coupled with the circumstances, which I have indicated above, the charges were ultimately held to have been proved against the petitioner.

15. So far as the argument of Mr.Supehia regarding consultation with the G.P.S.C. is concerned, Mr.Upadhyay has relied on the decision of the Apex Court in Baldev Raj Guliani v. The Punjab and Haryana High Court and others, AIR 1976 SC 2490. It has been observed in paragraph 31 as under :-

> " ... ...
>
> 31. It is true that under Article 235 as well as under the Appointment and Punishment Rules, the Governor is the appointing and punishing authority. But under Article 235 the High Court is the

> sole custodian over the discipline of the judicial officers. There is no warrant for introducing another extraneous body between the Governor and the High Court in the matter of disposal of a disciplinary proceeding against a judicial officer. It is submitted on behalf of the appellants that Article 320(3)(c) provides that the Public Service Commission shall be consulted on all disciplinary matters affecting a person serving under the Government of a State in a civil capacity. Judicial Officers although holding posts in civil capacity are not serving under the Government of a State. They hold posts in connection with the affairs of the State but are entirely under the jurisdiction of the High Court for the purpose of control and discipline. There is, therefore, no constitutional justification or sanction for the Governor, even if he wishes, to consult the Public Service Commission under Article 320(3)(c) in respect of judicial officers. Consultation with the Public Service Commission in this case and preference accorded to its advice ignoring the recommendation of the High Court have introduced a serious constitutional infirmity in the final order of reinstatement passed by the Governor.
>
> ... ..."

In view of the aforesaid decision of the Apex Court, the aforesaid argument that without consultation with the G.P.S.C., no order could have been passed, cannot be accepted and the said argument is required to be rejected.

16. So far as the argument of Mr.Supehia to the effect that in view of non-examination of Mr.Khambholja, Advocate, adverse inference is required to be drawn against the Department is concerned, it is required to be noted that the material and relevant witnesses, who were required to be examined were examined by the Department. It was found by the Department that it was not necessary to examine Mr.Khambholja. Obviously, he was not likely to support the stand of the Department. It is also required to be noted that the petitioner was given ample opportunity to examine his own witnesses, but, except examining himself, he has not examined any other witness

at all. It was open for the petitioner to examine Mr.Khambholja, Advocate, as his witness, but he failed to do so. However, Mr.Supehia argued that he was not examined because his statement was not given to the delinquent.

I also accept the argument of Mr.Upadhyay that since Mr.Khambholja was not examined by the Department, there was no question of offering him for cross-examination so far as the delinquent is concerned.

17. Mr.Upadhyay has cited various other judgments to substantiate his say that even as per the principles of preponderance of probability, it is open for the Departmental Authority to hold that the charges against the employee can be said to have been proved. However, I have already dealt with this issue in the earlier part of the order and, in my view, there was enough material for coming to the conclusion, which is arrived at by the Department.

18. Mr.Upadhyay has also relied upon the decision of the Apex Court in the case of The High Court of Judicature at Bombay v. Shashikant S. Patil and another, AIR 2000 SC 22. In the aforesaid case, a Judicial Magistrate was subjected to penalty of compulsory retirement by the High Court of Mumbai on its administrative side. The said order was challenged on the Judicial side and the Division Bench of the High Court allowed the writ petition, reinstating the said Magistrate in service. The said decision was challenged on behalf of the High Court before the Apex Court. In paragraph 24 of the said judgment, it has been observed by the Apex Court as under :-

> " ... ...
>
> 24. When such a constitutional function was exercised by the administrative side of the High Court any judicial review thereon should have been made not only with great care and circumspection, but confining strictly to the parameters set by this Court in the aforecited decisions. In the present case, as per the judgment under appeal the Division Bench of the Bombay High Court appears to have snipped off the decision of the Disciplinary Committee of the High Court as if the Bench had appeal powers over the decision of five judges on the

administrative side. At any rate the Division Bench has clearly exceeded its jurisdictional frontiers by interfering with such an order passed by the High Court on the administrative side.

... ..."

Even otherwise, the decision taken by the High Court on its administrative side is fully justified in view of the evidence on record and there is absolutely no justification worth the name in interfering with the aforesaid finding which is based on appropriate material on record.

19. Reference to the decision of the Apex Court, in P.N. Joshi v. State of U.P. and others, 2001 AIR SCW 2924, on which Mr.Supehia has relied, is required to be made at this stage. The Apex Court has observed as under in paragraph 7 :-

" ... ...

7. In the present case, though elaborate enquiry has been conducted by the Enquiry Officer, there is hardly any material worth the name forthcoming except to scrutinise each one of the orders made by the appellant on the judicial side to arrive at a different conclusion. That there was possibility on a given act of facts to arrive at a different conclusion is no ground to indict a judicial officer for taking one view and that too for alleged misconduct for that reason alone. The Enquiry Officer has not found any other material, which would reflect on his reputation or integrity or good faith or devotion to duty or that he has been actuated by any corrupt motive. At best he may say that the view taken by the appellant is not proper or correct and not attribute any motive to him which is for extraneous consideration that he had acted in that manner. If in every case where an order of a subordinate Court is found to be faulty a disciplinary action were to be initiated, the confidence of the subordinate judiciary will be shaken and the officers will be in constant fear of writing a judgment so as not to face a disciplinary enquiry and thus judicial

> officers cannot act independently or fearlessly. Indeed the words of caution are given in K.K. Dhawan's case (1993 AIR SCW 1361 : AIR 1993 SC 1478 : 1993 LAB IC 1028) (supra) and A.N. Saxena's case (1992 AIR SCW 1336: AIR 1992 SC 1333: 1992 Cri LJ 1940) (supra) that merely because the order is wrong or the action taken could have been different does not warrant initiation of disciplinary proceedings against the judicial officer. In spite of such caution, it is unfortunate that the High Court has chosen to initiate disciplinary proceedings against the appellant in this case.
>
> ... ..."

It is required to be noted that, in the aforesaid case, it was found that there was hardly any material worth the name except scrutinising some judicial orders passed by the concerned Judicial Officer. Under the facts and circumstances of the case, it was found by the Apex Court that there was possibility on a given act of facts to arrive at a different conclusion, but the same is no ground to indict a Judicial Officer for taking one view and that too for alleged misconduct for that reason alone. The Enquiry Officer in that case did not find any other material which would reflect on the reputation or integrity of the concerned Judicial Officer. In the instant case, however, the chain of circumstances and evidence on record clearly suggest that the changing of the order passed on the previous evening, from directing issuance of summons to directing issuance of warrant on the next morning was not due to genuine and bona fide ground. The facts of the case and the circumstances prove beyond doubt that the order directing issuance of summons was changed on the next day only at the instance of the concerned Advocate and, there was no other bona fide reason which can come to the rescue of the petitioner for changing such order. It is unfortunate that because of such an order, those innocent persons, who were described as accused, were subjected to such mental agony and if the concerned Magistrate fails to apply his mind before issuance of process in a criminal case, innocent citizens are likely to suffer. Even the minimum reasonable care of holding an enquiry, as prescribed in the Code of Criminal Procedure, was not made in the instant case. Even the original complainant has clearly stated during the enquiry proceedings as to how she was asked to put her thumb impression on the prepared complaint. Even the concerned Magistrate did

not ask relevant question, except asking questions relating to some matrimonial case and taking advantage of the illiteracy of the concerned lady, the entire thing was concocted. It is a matter of pity that the entire thing was cooked up with the help of the concerned Advocate and, unfortunately, the Magistrate also became a party to the said episode. In the matter of administration of justice, even Advocates are having an important duty to discharge, because, ultimately, all concerned, including the Advocates, are to see that proper justice is done to the litigant. The administration of justice is a pious work and with the help of all concerned, ultimately, justice is required to be done to the concerned party. Therefore, in order to do justice to the real party, all who are associated with the system at all levels are expected to act in an honest and upright manner. That is why the legal profession is known as a "Noble Profession", because Advocates are concerned with the pious work of helping a Judge in finding out the real truth in a matter. Nobody, therefore, who is associated with this pious work has any right to pollute the system in any manner and if any one is found to be doing such mischief, he is required to be kept at a safe distance. The ultimate goal is of doing justice by finding out the truth. Filing of such false cases are increasing day by day and the concerned Judge, who is in charge of such criminal case or complaint should, therefore, apply his mind properly so that nobody can make any grievance that false warrants or processes are issued in various Courts of Magistrates in the State.

20. Lastly, it was suggested by Mr.Supehia that, in any case, the order of dismissal is on the higher side and some lighter penalty should have been imposed to the petitioner, since he is having a large family and his past record is unblemished and blotless. In my view, this is not a case in which any other penalty except dismissal is justified. If the order of dismissal is not justified in this case, there can hardly be any better case in which such order can be passed. A Judicial Officer, having accepted the job of Judicial Officer, is not expected to deviate from integrity even to a slightest extent and if there is any such deviation, as in this case, he has no right to continue on that post even for a second. I, therefore, do not find that the order of dismissal is on the higher side or is required to be interfered with by awarding lesser penalty. Before indulging in such activity, the petitioner should have taken care and he should have displayed an exemplary behaviour as a Judicial Officer.

21. Before parting with this judgment, last argument of Mr.Supehia is required to be noted. He submitted that before passing the dismissal order, on the basis of the recommendation of the High Court, the State should have given copy of such recommendation to the petitioner. This argument is required to be rejected forthwith because once there is a recommendation of the High Court for dismissing the petitioner from service, the State has no option but to accept the recommendation of the High Court. It is futile to give any copy of such recommendation of the High Court to the petitioner. Even this aspect has been considered by the Apex Court in Baldev Raj Guliani v. The Punjab and Haryana High Court and others, AIR 1975 SC 2490, to which reference is already made. Even otherwise, since the copy of the Enquiry Officer's report is made available to the petitioner and since the petitioner has already made submission against the second show cause notice, in my view, the recommendation of the High Court given to the State Government is not required to be given to the petitioner and it cannot be said that any prejudice is caused to the petitioner on account of non-supply of the said recommendation.

23. In view of what is stated above, I do not find any merit in any of the contentions raised by Mr.Supehia, learned Advocate for the petitioner. The petition is devoid of any merit and the same is required to be dismissed and it is accordingly dismissed. Rule is discharged with no order as to costs.

23rd January, 2002 (P.B. Majmudar, J.)

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(apj)